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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
CELENA WOODS,	:	LS0706134BAC
RESPONDENT.	:	

Division of Enforcement Case No. 06BAC101

The State of Wisconsin, Barbering and Cosmetology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Barbering and Cosmetology Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 2nd day of June, 2008.

Jeannie M. Bush
Member of the Board
Barbering and Cosmetology Examining Board

**STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**PROPOSED DECISION
Case No. LS0706134BAC**

**CELENA WOODS,
RESPONDENT.**

Division of Enforcement Case No. 06 BAC 101

PARTIES

The parties in this matter under Wis. Stats. § 227.44 and for purposes of review under Wis. Stats. § 227.53 are:

Celena Woods
4447 North 75th Street
Milwaukee, Wisconsin 53218

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing on June 13, 2007. The hearing was held on July 30, 2007. Closing arguments were filed by September 12, 2007. Atty. Claudia Berry Miran appeared on behalf of the Department of Regulation and Licensing (Department). The respondent, Celena Woods, appeared in this matter without legal counsel.

Based upon the record herein, the Administrative Law Judge recommends that the Barbering and Cosmetology Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Celena Woods is duly licensed as a barber or cosmetology apprentice (license #79489), which was first granted on August 12, 2005. Ms. Woods' last address reported to the Department is 4447 North 75th Street, Milwaukee, WI 53218.

2. At least on February 23, 2007, Ms. Woods worked as a barber or cosmetology apprentice at New Waves Hair Styling Studio (referred to herein as "salon"), a licensed barber or cosmetologist establishment, located at 4481 N. 76 Street, in Milwaukee, Wisconsin.

3. On February 23, 2007, Douglas Austin, an Investigator with the Department of Regulation and Licensing, Division of Enforcement, met with the owner of the salon, Veronica E. Harrison. He informed Ms. Harrison there was a complaint that an apprentice, Celena Woods, had been working at the salon without a licensed manager. He also informed Ms. Harrison that he would be performing a complete inspection of the salon while he was there.

4. Mr. Austin arrived at the salon around 11:00 a.m. In addition to speaking with Ms. Harrison, Mr. Austin also spoke with all of the other licensees who were in the salon at the time of his visit. At that time, Mr. Austin did not obtain the names of the other licensees who were in the salon. He informed Ms. Harrison of the violations that he found at the salon, and told her that he would be sending a list of the violations to her in the mail. When he returned to the Department, Mr. Austin told the

attorney assigned to the case of the violations that he found at the salon. Mr. Austin's initial plan was to only cite the owner of the establishment for all the violations, but the attorney asked him to go back and get the names of everyone that was present and issue citations for all the violations to each individual licensee. On April 5, 2007, approximately 6 weeks later, Mr. Austin prepared a "memo to file folder" that summarized the result of his findings during his inspection.

5. On April 12, 2007, 7 weeks after the inspection, Mr. Austin went back to the salon to obtain the names of the licensees who were working in the salon at the time he conducted his inspection. When he returned to the salon, he did not find any subsequent violations.

6. On April 17, 2007, Mr. Austin issued 3 Citations for Administrative Forfeiture involving Ms. Woods for violations that he found during his February 23, 2007, inspection of the salon. The violations cited were:

- a. The disinfectant used for decontamination was found not to be changed on a daily basis as is required.
- b. All shampoo bowls were found with hair in them. They were not cleaned after previous customers and after each use. Each licensee is responsible for compliance with precautions and rules contained in ch. BC 4.
- c. During my inspection, it was noted that this individual's license or certificate was not posted anywhere in the establishment.

7. At the time of the inspection conducted by Mr. Austin on February 23, 2007, Ms. Woods' practice was to change her disinfectant daily.

8. At the time of the inspection conducted by Mr. Austin on February 23, 2007, Ms. Woods' practice was to clean her shampoo bowl after each use.

9. At the time of the inspection conducted by Mr. Austin on February 23, 2007, Ms. Woods' license certificate was not posted in a conspicuous place in the salon.

10. The Citations for Administrative Forfeiture involving Ms. Woods that Mr. Austin issued on April 17, 2007, included the following notices (with a dollar amount stated in each Citation):

Pursuant to Wis. Stats. § 454.15 (3), the licensing authority is authorized to impose a forfeiture in lieu of or in addition to other disciplinary action against your license.

PLEASE TAKE NOTICE THAT THE CREDENTIAL HOLDER MAY DEPOSIT A FORFEITURE AND COSTS IN THE AMOUNT \$_____ BY MAILING A CHECK OR MONEY ORDER NO LATER THAN TWENTY (20) DAYS FROM THE DATE OF THIS CITATION, TOGETHER WITH THE SIGNED COPY OF THIS FORM TO: DEPARTMENT OF REGULATION AND LICENSING, DIVISION OF ENFORCEMENT, 1400 EAST WASHINGTON AVENUE, P. O. BOX 8935, MADISON, WI 53708. PAYMENT SHALL BE TREATED AS A PLEA OF NO CONTEST TO THE VIOLATION CITED ABOVE AND CONSENT TO AN ORDER OF FORFEITURE PLUS COSTS, NOT TO EXCEED THE AMOUNT OF THE DEPOSIT.

Please reference "Notice of Right to Contest" on backside of pink copy.

11. The Citation for Administrative Forfeiture relating to failure to change the disinfectant on a daily basis contained forfeiture and cost in the amount of \$130.00. The Citation relating to failure to clean the shampoo bowls after each use contained forfeiture and costs in the amount of \$30.00. The Citation relating to failure to post a license contained forfeiture and costs in the amount of \$30.00. The total forfeiture and costs imposed on Ms. Woods as a result of Mr. Austin's February 23,

2007, inspection was \$190.00.

CONCLUSIONS OF LAW

1. The Barbering and Cosmetology Examining Board has jurisdiction in this matter pursuant to Wis. Stats., §§ 454.06, 454.08 and 454.15.
2. Respondent's conduct, as described in Findings of Fact 7 herein, does not constitute a violation Wis. Admin. Code, § BC 4.02 (5).
3. Respondent's conduct, as described in Findings of Fact 8 herein, does not constitute a violation of Wis. Admin. Code, § BC 2.08 or BC 4.01 (5).
4. Respondent's failure to posting her license certificate in a conspicuous place in the salon, as described in Findings of Fact 9 herein, constitutes a violation of Wis. Stats., § 454.06 (7).

ORDER

NOW, THEREFORE, IT IS ORDERED that the Citation for Administrative Forfeiture issued by the Board, dated April 17, 2007, relating to the respondent's failure to post her license certificate in a conspicuous place in the salon be, and hereby is, **AFFIRMED**.

IT IS FURTHER ORDERED that:

1. The Citations for Administrative Forfeiture issued by the Board, dated April 17, 2007, relating to the respondent's failure to change her disinfectant on a daily basis and failure to clean her shampoo bowl after each use be, and hereby are, **Dismissed**.
2. Respondent shall pay a forfeiture in the amount of thirty dollars (\$30.00) to the Department of Regulation and Licensing for violation of Wis. Stats., § 454.06 (7) [failure to post her license certificate in a conspicuous place in the salon].

This order is effective on the date on which it is signed by a designee of the Barbering and Cosmetology Examining Board.

OPINION

I. Procedural History

This matter was commenced by the filing of a Notice of Hearing on June 13, 2007. The hearing was held on July 30, 2007. Closing arguments were filed by September 24, 2007. Atty. Claudia Berry Miran appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Ms. Woods appeared in this matter without legal counsel.

II. Applicable Laws

454.06 Licensure. (7) POSTING OF LICENSE CERTIFICATES. The examining board shall furnish a certificate to each licensee, certifying that the holder is licensed to practice barbering or cosmetology, aesthetics, electrology or manicuring or is a licensed manager. The licensee shall post the certificate in a conspicuous place in the licensed establishment.

454.15 Disciplinary proceedings and actions. (2) Subject to the rules promulgated under s. 440.03 (1) and this chapter, the examining board may revoke, limit, suspend or refuse to issue or renew, in accordance with the severity of the violation, a license or permit issued under this chapter or reprimand the holder of a license or permit issued under this chapter if it finds that the holder or applicant has done any of the following:

...

(i) Violated this chapter or any rule promulgated under this chapter.

(3) The examining board may, in addition to or in lieu of a reprimand or revocation, limitation, suspension or denial of a license or permit, assess against a person who has done any of the things under sub. (2) (a) to (i) a forfeiture of not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

BC 2.08 Responsibilities of licensees. (1) Licensees holding current licenses or permits granted under ch. 454, Stats., shall:

(a) Be responsible for compliance with the sanitation and safety precautions contained in ch. BC 4.

(b) Be responsible for their own professional practice, conduct and compliance with ch. BC 2.

BC 4.01 Equipment and sanitation. (5) Shampoo bowls and basins shall be drained after each use and kept in a sanitary and safe condition.

BC 4.02 Disinfection. (5) Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container.

III. Summary of Evidence

A. General Overview

Ms. Woods has been licensed as a barber or cosmetology apprentice since August 12, 2005. At least on February 23, 2007, Ms. Woods was working as an apprentice at New Waves Hair Styling Studio (referred to herein as "salon"), which is located at 4481 N. 76 Street, in Milwaukee, WI.

On February 23, 2007, Douglas Austin, an Investigator with the Department of Regulation and Licensing, Division of Enforcement, met with the owner of the salon, Veronica E. Harrison. He informed Ms. Harrison there was a complaint that Ms. Woods had been working at the salon without a licensed manager. He also informed Ms. Harrison that he would be performing a complete inspection of the salon while he was there.

Mr. Austin arrived at the salon around 11:00 a.m. When he arrived at the salon, he asked for and met the owner of the salon, Veronica Harrison. He said that there were other licensees in the salon at that time, including Ms. Woods. Mr. Austin said that he spoke with all of the licensees who were in the salon at that time, but he did not write down their names. He said that the primary reason for his visit was to investigate Ms. Harrison (the owner of the salon), and Ms. Woods (the apprentice who had been working at the salon without a licensed manager). Tr. p. 7-8; Exhibit 4.

In reference to the violations that he found, Mr. Austin testified that the first one that he found was that the establishment

license was not posted. In speaking to Ms. Harrison in her office, it was determined that the license was in a broken frame under a pile of papers on her desk. In addition, Mr. Austin asked each individual licensee for their license because he did not observe that they were posted. In reference to the shampoo bowls that were being used, none of them were clean. They had hair left over from previous customers. Finally, Mr. Austin asked the licensees about how often they changed their barbercide. The responses ranged from one week to two to three months. Tr. p. 7.

Mr. Austin informed Ms. Harrison of the violations that he found. When he returned to the Department, he told the attorney assigned to the case of the violations that he found at the salon. Mr. Austin said that his initial plan was to only cite the owner of the establishment for all the violations, but the attorney asked him to go back and get the names of everyone that was present and issue citations for all the violations to each individual licensee. On April 5, 2007, approximately 6 weeks after the inspection, Mr. Austin prepared a "memo to file folder" that summarized the result of his findings during his inspection. Tr. p. 8; Exhibits 2, 3, 4.

On April 12, seven weeks after the inspection, Mr. Austin went back to the salon to obtain the names of the licensees who were present during the February inspection. When he returned to the salon in April, he spoke to Ms. Harrison. He told her that he would be issuing citations. Then he went to every station that he had been to in February and wrote down the names of all the licensees. When asked what he found during his second return visit as far as violations, Mr. Austin testified that he did not find any subsequent violations. Tr. p. 8.

On April 17, 2007, Mr. Austin issued three separate Citations for Administrative Forfeiture involving Ms. Woods. Mr. Austin found the following violations during his February 23, 2007, inspection of the salon [Exhibits 2, 3 and 4]:

- a. The disinfectant used for decontamination was found not to be changed on a daily basis as is required.
- b. All shampoo bowls were found with hair in them. They were not cleaned after previous customers and after each use. Each licensee is responsible for compliance with precautions and rules contained in ch. BC 4.
- c. During my inspection, it was noted that this individual's license or certificate was not posted anywhere in the establishment.

The three Citations for Administrative Forfeiture that Mr. Austin issued on April 17, 2007, contained the following notices (with a specific dollar amounts stated in each Citation):

Pursuant to Wis. Stats. § 454.15 (3), the licensing authority is authorized to impose a forfeiture in lieu of or in addition to other disciplinary action against your license.

PLEASE TAKE NOTICE THAT THE CREDENTIAL HOLDER MAY DEPOSIT A FORFEITURE AND COSTS IN THE AMOUNT \$_____ BY MAILING A CHECK OR MONEY ORDER NO LATER THAN TWENTY (20) DAYS FROM THE DATE OF THIS CITATION, TOGETHER WITH THE SIGNED COPY OF THIS FORM TO: DEPARTMENT OF REGULATION AND LICENSING, DIVISION OF ENFORCEMENT, 1400 EAST WASHINGTON AVENUE, P. O. BOX 8935, MADISON, WI 53708. PAYMENT SHALL BE TREATED AS A PLEA OF NO CONTEST TO THE VIOLATION CITED ABOVE AND CONSENT TO AN ORDER OF FORFEITURE PLUS COSTS, NOT TO EXCEED THE AMOUNT OF THE DEPOSIT.

Please reference "Notice of Right to Contest" on backside of pink copy.

The Citation for Administrative Forfeiture relating to failure to change the disinfectant on a daily basis contained forfeiture and cost in the amount of \$130.00. The Citation relating to failure to clean the shampoo bowls after each use contained

forfeiture and costs in the amount of \$30.00.

The Citation relating to failure to post a license contained forfeiture and costs in the amount of \$30.00. The total forfeiture and costs imposed on Ms. Woods as a result of Mr. Austin's February 23, 2007 inspection was \$190.00.

B. Testimony of Douglas Austin

1. Background

Douglas Austin testified at the request of the Division of Enforcement. Mr. Austin is an Investigator with the Department of Regulation and Licensing, Division of Enforcement. Part of his duties includes the inspection of barber or cosmetologist establishments. Typically inspections are unannounced. Mr. Austin's general procedure during an inspection is to announce himself when he goes into a salon; ask to see the owner or the manager and then let the manager know what he is there for. He asks to see the establishment license. Usually he uses the self-inspection form to make sure that he does not miss anything during the inspection. Exhibit #3.

2. February 23, 2007 Inspection

On February 23, 2007, Mr. Austin made an unannounced visit to New Waves Hair Styling Studio, which is located at 4481 N. 76 Street, in Milwaukee, Wisconsin. Mr. Austin arrived at the salon at approximately 11:00 a.m. When he arrived at the salon, he asked for and met the owner of the salon, Veronica Harrison. He said that there were other licensees in the salon including Ms. Woods. Mr. Austin said that he spoke with all of the licensees who were in the salon at that time, but he did not write down their names. He said that the primary reason for his visit was to investigate Ms. Harrison (the owner of the salon), and Ms. Woods (the apprentice who had been working at the salon without a licensed manager). ¹ Tr. p. 7-8; Exhibit 4.

Mr. Austin testified that during the inspection, he found numerous violations. First, there were no licenses posted. Mr. Austin said that he went to every individual that was working and asked for their license because he did not find any individual licenses posted. He also asked the licensees how often they changed their disinfectant or their barbercide. He said that they told him that the disinfectant was changed anywhere from one week to as much as two to three months. Finally, Mr. Austin said that he found hair in the shampoo bowls.

In reference to Ms. Woods, Mr. Austin testified that when he went to Ms. Woods' station, he asked her for her license. He said that he did not remember her license being posted. He remembers that "she had to dig it out of -- seems like some papers or out of her wallet, one of the two. I know that it was not posted". He was sure he asked everyone in the salon about barbercide or disinfectant, and he remembers Ms. Woods telling him she changed her disinfectant once a week. Mr. Austin said that he specifically recalls Ms. Woods' response because she was the one he was there to see and that she was one of the first individuals that he talked to when he arrived at the salon. In reference to hair in the shampoo bowls, he said that he did not recall specifically asking Ms. Woods about the shampoo bowls.

During cross-examination, Ms. Woods asked Mr. Austin whether he questioned her about the barbercide. He said that he asked everybody about the barbercide, and that, to the best of his recollection, when he asked her how often she changed her barbercide she said once a week.

After Mr. Austin concluded his inspection, he told Ms. Harrison what needed to be corrected, and told her that he would be writing up citations. On April 5, 2007, approximately 6 weeks after his inspection, Mr. Austin prepared a "memo to file folder" that summarized the result of his findings during his inspection.

On April 12, 2007, seven weeks after his inspection, Mr. Austin went back to the salon to obtain the names of the licensees who were present during the February inspection. When he returned to the salon in April, he spoke to Ms. Harrison and told her that he would be issuing citations. He went to every station that he had been to in February and wrote down the

names of all the licensees. Mr. Austin did not find any subsequent violations during his second visit.

1. No violations were cited relating to Ms. Woods' practice without a licensed manager, because there were four managers at the salon who would have been available to supervise her.

Testimony of Celena Woods

Ms. Woods has been a licensed barber or cosmetology apprentice since August 12, 2005. At least on February 23, 2007, Ms. Woods worked as an apprentice at New Waves Hair Styling Studio (referred to herein as "salon"), a licensed barber or cosmetologist establishment, located at 4481 N. 76 Street, in Milwaukee, Wisconsin. Ms. Woods was at the salon at the time that Mr. Austin conducted his inspection on February 23, 2007.

Ms. Woods testified that she remembered when Mr. Austin came into the salon. He asked her where her license was. She said that her license was sitting up against the mirror and that she did have to pull it from the mirror. She said that she never had to go through a purse or wallet or anything to pull it out. The license was sitting up against the mirror. Ms. Woods further testified as follows [Tr. p. 14-16]:

THE COURT: Okay. You're excused.
Thank you. Ms. Woods, you may testify if you want to give testimony.

CELENA WOODS, called as a witness, being first duly sworn, testified on oath as follows:

THE COURT: Okay. You can remain there.

MS. WOODS: Okay.

THE COURT: When you're done, Attorney Miran may have some questions for you.

MS. WOODS: Okay. All right.
I remember the day when the inspector came in. Just to reiterate there, there's five stations on our side. I am the second to the left one from the end; but there are five stations, not four on our side. I do remember he came in. He spoke with Angela, the woman who does the braids. He did step to me next, and he asked me where my license was. My license was sitting up against the mirror. I did have to pull it from the mirror. I never had to go through a purse or wallet or anything to pull it out. It was sitting up against the mirror, and the tape is weak or whatever so that's my fault. When I handed him the license he said, "Oh, you do have a license."

I remember him specifically saying that because my client that was in the chair at the time was disturbed to hear that. She said to me, "Well, aren't you supposed to have a license if you're working in a hair salon?" And I said, "I do." She said, "Well, he was acting like you didn't have one." I remember that very specifically because my client said something about it afterwards. From there, he wrote down information and walked on. He never once said anything to me about my barbercide. Like I said, I am a current student. This is my last semester, I graduate in December and I know very well that the barbercide needs to be changed every 24 hours. That's one thing Haviva (ph) says to us all the time about our barbercide water. As far as the hair in the sink, nothing was mentioned to me about the hair in the sink. We don't have individual sinks. Those sinks are shared by everyone that works on our side. Even if -- that's just like if someone from the other side can't get a sink when they need it, they'll come over to our side. It is one whole hair salon. We are not assigned to certain sinks; nor are we assigned to certain dryers, so we share in there. That is one of the reasons that I felt I needed to come in and contest this. I am not the only person that uses that sink. Not everyone has the same habit as is evidenced. Not everyone knows about the way we need to sanitize and clean up. I don't know. Maybe we need a refresher course. But I am very well aware that I know we need to sanitize our sinks after each client and when to change the barbercide. I know that very well.

During cross-examination, Ms. Woods testified as follows in reference to posting her license certificate [Tr. p. 17-18]:

BY MS. BERRY MIRAN:

Q You said your license was down on your mirror. Do you mean that it slipped or fell off where you had attached it and was down behind something?

A No. The way the station is set up -- the station is here, and the countertop goes up against the mirror. I had pictures around, so it fell down and fell down

the countertop. It was not in between. It was just down on the countertop. So straight down the mirror like that.

Q Did you have anything in front of it?

A Well, I had a lot of things on my station that morning because I was working on someone's hair for a wedding. It's just like my barbercide jar is up there and then I had some product jars and cans and things like that.

Ms. Woods further testified regarding the posting of her license certificate as follows
[Tr. p. 19]:

THE COURT: Well, I have a question.
You said you had clients that day?

MS. WOODS: Yes.

THE COURT: Were you working on a client?

MS. WOODS: Yes. I was working on her hair at the time.

THE COURT: You said your license fell on the -- what do you call it?

MS. WOODS: The countertop.

THE COURT: The countertop. Was it still visible to the public? Could someone see it -- a patron see it? Was it under something?

MS. WOODS: It was not under something. It just fell straight down from the mirror. So whatever I had from the countertop, it could have been sitting there blocking it. It was not underneath or inside of something, no.

THE COURT: How long had it been there?

MS. WOODS: Oh, it just fell like that same day.

THE COURT: That same day?

MS. WOODS: I had been at work since 7:00 that morning so --

IV. Analysis of Evidence

On April 17, 2007, Mr. Austin issued three separate Citations for Administrative Forfeiture relating to the following violations that he found during his February 23, 2007, inspection of the salon [Exhibits 2, 3 and 4]:

A. Failure to change the disinfectant on a daily basis

The evidence presented does not establish that Ms. Woods failed to change her disinfectant on a daily basis. The Division of Enforcement has the burden of proof.

During his inspection, Mr. Austin found that the disinfectant used for decontamination was not changed on a daily basis. He said that he spoke to every licensee in the establishment at the time of his inspection and that he asked every licensee about how often they changed their barbicide. Their response ranged from one week to 3 months. He remembers Ms. Woods saying that she changed her barbicide once a week.

Ms. Woods testified that Mr. Austin never said anything to her about the barbercide. She also said that as a student who was scheduled to graduate in December 2007, she was aware that the barbercide had to be changed every 24 hours.

It should be noted that Mr. Austin did not identify a specific licensee in his Compliance Inspection Report or in his "memo to file folder", dated April 5, 2007, as a person who failed to change his or her disinfectant on a daily basis. There are no references to Ms. Woods in either of the reports. Ms. Woods' name is only mentioned in the Citation. Mr. Austin testified that he spoke with numerous other licensees at the salon on the day of his inspection. Since the Citation was issued almost 2 month after the inspection, there are some questions regarding Mr. Austin's recollection of the events that occurred during the inspection. Exhibits 2, 3, 4.

B. Failure to clean the shampoo bowls

The evidence presented does not establish that Ms. Woods failed to clean her shampoo bowl after each use. The Division of Enforcement has the burden of proof.

Mr. Austin said that, during his inspection, he found hair in all of the shampoo bowls. He said that the bowls were not cleaned after previous customers or after each use. In the Citation for Administrative Forfeiture, Mr. Austin stated that each licensee is responsible for compliance with precautions and rules contained in ch. BC 4. Tr. p. 7; Exhibits 2-4.

Ms. Woods testified that Mr. Austin did not mention anything to her about hair in the sink. She said that the sinks were shared by all of the licensees that worked on her side of the salon.

It should also be noted that Mr. Austin did not identify any specific licensee in his Compliance Inspection Report or in his "memo to file folder", dated April 5, 2007, as a person who failed to remove hair from his or her shampoo bowl after each use. There are no references to Ms. Woods in either of the reports. Ms. Woods' name is only mentioned in the Citation, which includes a statement that "all shampoo bowls were found with hair in them" and states that each licensee is responsible for compliance with precautions and rules contained in ch. BC 4. Also, the Citation was issued almost 2 months after the inspection, which raises some questions regarding Mr. Austin's recollection of the events that occurred during the inspection. Exhibits 2, 3, 4.

C. Failure to post license or certificate

The evidence presented establishes that, at least at the time of the inspection, Ms. Woods' license certificate was not posted in a conspicuous place in the salon.

Mr. Austin said that during his inspection he noted that Ms. Woods' license or certificate was not posted anywhere in the establishment. He asked each individual licensee for their license because he did not observe that they were posted. Tr. p. 7; Exhibits 2, 3, 4.

Ms. Woods testified that prior to the day of the inspection her license certificate had been placed on her mirror at her work station. She admitted that her license certificate had fallen from the mirror down onto the countertop sometime on the day of the inspection. She had a lot of things on her work station that morning, including barbercide and some product jars and cans, because she was working on someone's hair for a wedding. She said that whatever she had on the countertop could have blocked the view of her license.

V. Responsibilities of Licensees under Wis. Adm. Code BC 2.08

In its closing arguments, the Division of Enforcement (Division) argues that Ms. Woods is in violation of Wis. Admin. Code, §§ BC 4.01 (5) and 4.02 (5), because of her own conduct, as well as the conduct of the other licensees in the salon who allegedly violated those provisions. The Division cites to Wis. Admin. Code, § BC 2.08 (1) (a), which reads as follows:

BC 2.08 Responsibilities of licensees. (1) Licensees holding current licenses or permits granted under ch. 454, Stats., shall:

(a) Be responsible for compliance with the sanitation and safety precautions contained in ch. BC 4.

The Division interprets this provision to mean that the Board's intent is to hold a licensee responsible for making sure that all licensees in an establishment comply with the sanitation and safety precautions contained in Wis. Admin. Code, ch. BC 4, not just be responsible for his or her own conduct. In my opinion, there is no legal basis for this interpretation.

First, in my opinion, the rule is clear and unambiguous. It states that licensees holding current licenses or permits granted under Wis. Stats., ch. 454, shall be responsible for compliance with the sanitation and safety precautions contained in ch. BC 4. On its face, the rule does not state that a licensee is responsible for making sure that other licensees in an establishment comply with Wis. Admin. Code, ch. BC 4.

Second, even if one concluded that the rule is ambiguous, the Division did not provide any information indicating that its interpretation reflects the Board's intent. No information was submitted relating to the Board's intent, as reflected in the history of its rule; in opinions issued by the Board to licensees; in informational materials provided to licensees; or in disciplinary actions taken by the Board. The statement is merely the Division's opinion that the interpretation reflects the Board's intent.

Finally, there are no references to Wis. Admin. Code, § BC 2.08 (1) (a) in the Citations for Administrative Forfeitures or in the Notice of Hearing as it relates to §§ BC 4.01 (5) and BC 4.02 (5). This issue was first raised in the Division's closing arguments. Ms. Woods was not provided with adequate notice that the Division would be alleging that she was responsible for the conduct of other licensees in the establishment in which she worked.

VI. Assessment of Forfeitures and Costs

A. In General

Having found that Ms. Woods violated Wis. Admin. Code, § BC 4.02 (5), by failing to post her license in a conspicuous place in the salon, a determination must be made regarding the appropriateness of imposing forfeitures and costs.

In the Citation for Administrative Forfeiture, which related to Ms. Woods' failure to post her license in the salon, the Board informed Ms. Woods that she could deposit forfeiture and costs in the amount of \$30.00, by mailing a check or money order no later than 20 days from the date of the Citation, together with the signed copy of the Citation. The Notice states that payment shall be treated as a plea of no contest to the violation cited and consent to an Order of Forfeiture plus costs, not to exceed the amount of the deposit. Although page 2 of the Citation for Administrative Forfeiture was not entered into the record as part of Exhibit 2, one can assume that, based upon the form Citation found in Appendix I to Wis. Adm. Code, ch. BC 10, the Citation served on Ms. Woods contained the following statement:

FURTHER NOTICE that within twenty (20) days of the date of service of this citation, the licensee may enter a plea contesting the violation(s) cited and request a hearing on the alleged violation (s). Submission of a plea contesting violations and requesting a hearing shall be in writing and submitted to the Department of Regulation and Licensing Division of Enforcement, 1400 East Washington Avenue, PO Box 8935, Madison, WI 53708.

If the credential holder does not make a deposit or otherwise respond to the citation in a timely fashion, the disciplinary authority may without further proceedings issue an order of default against the credential holder. A default order issued under this section may impose forfeiture and costs, not to exceed the amount identified in the citation. Violation of an order issued pursuant to this section may result in a refusal to renew credentialing or additional disciplinary action.

If the credential holder requests a hearing but fails to appear at the hearing at the time fixed therefor, the credential holder is in default and the disciplinary authority may make findings and enter an order on the basis of the citation.

In this case, Ms. Woods elected not to pay the \$30.00 forfeiture and costs and made a request for a hearing in a timely manner.

B. Assessment of Forfeitures

Initially, there were some questions regarding whether the Board has the authority to assess forfeitures in conjunction with the issuance of a Citation for Administrative Forfeiture. After further review of the Board's authority in Wis. Stats., § 454.15 and Wis. Adm. Code, ch. BC 10, it is clear that the Citation procedures sufficiently mirror the provisions contained in Wis. Admin. Code, ch. RL 2, which governs disciplinary proceedings, to alleviate any concerns or questions. In addition, this conclusion also alleviates any questions regarding whether the Board has the authority to issue Citations in the first instance.

The Board's authority to assess forfeitures is contained in Wis. Stats., § 454.15, which reads, in part, as follows:

454.15 Disciplinary proceedings and actions. (2) Subject to the rules promulgated under s. 440.03 (1) and this chapter, the examining board may revoke, limit, suspend or refuse to issue or renew, in accordance with the severity of the violation, a license or permit issued under this chapter or reprimand the holder of a license or permit issued under this chapter if it finds that the holder or applicant has done any of the following:

...

(i) Violated this chapter or any rule promulgated under this chapter.

(3) The examining board may, in addition to or in lieu of a reprimand or revocation, limitation, suspension or denial of

a license or permit, assess against a person who has done any of the things under sub. (2) (a) to (i) a forfeiture of not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

The procedure established by the Board for assessment of forfeitures is contained in Wis. Adm. Code, ch. BC 10.

Subsection BC 10.01 (3) states that the citation form provided by that section may serve as the initial pleading for a disciplinary action and is adequate process to give the Board jurisdiction over the credential holder, if the citation is served upon the credential holder and filed with the Board. Subsection BC 10.02 (2) states that a citation shall be substantially in the form shown in ch. BC 10, Appendix I.

Subsection BC 10.05 states that the credential holder may deposit the amount of forfeiture identified in the citation by mailing the deposit and a copy of the citation to the division. Payment shall be treated as a plea of no contest and submission to an order of forfeiture plus costs, not to exceed the amount of the deposit. Subsection BC 10.06 states that within 20 days of the date of service of the citation, the licensee may enter a plea contesting the violation cited and request a hearing on the alleged violation cited. Submission of a plea contesting violations and requesting a hearing shall be in writing and submitted to the division.

Finally, § BC 10.07 (1) states that if the credential holder does not make a deposit or otherwise respond to the citation in a timely fashion, the board may without further proceedings issue an order of default against the credential holder. A default order issued under this section may impose forfeiture and costs, not to exceed the amount identified in the citation. Violation of an order issued under this section may impose forfeiture and costs, not to exceed the amount identified in the citation. Violation of an order issued pursuant to this section may result in a refusal to renew credentialing or additional disciplinary action. Subsection BC 10.07 (2) provides that if the credential holder requests a hearing pursuant to s. BC 10.05 but fails to appear at the hearing at the time scheduled, the credential holder is in default and the board may make findings and enter an order on the basis of the citation. The board may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the board enters an order or within a reasonable time.

In this case, the Citations issued against Ms. Woods served as the initial pleading for commencement of a disciplinary proceeding. The Citations contain a provision which offered Ms. Woods an opportunity to pay forfeitures and costs, in essence settle the matter, without a hearing. The Citations also contained a provision which offered Ms. Woods an opportunity for a hearing, and provided notice that failure to pay the forfeitures or request a hearing could result in the issuance of an order of default.

In reference to whether Ms. Woods should be ordered to pay forfeitures in conjunction with this proceeding, in my opinion, the answer is yes. The evidence presented establishes that Ms. Woods failed to post her license certificate in a conspicuous place in the salon. The Citation for Administrative Forfeiture issued against Ms. Woods contains a provision assessing forfeiture and costs in the amount of \$30.00 for failure to post her license certificate in a conspicuous place in the salon. The Citation does not specify the percentage of the \$30.00 that was assessed as forfeitures or the amount assessed as costs. The Board is authorized under Wis. Stats., § 454.15 (3), to assess a forfeiture of not more than \$1,000 for each separate offense. In my opinion, based upon the evidence presented, the assessment of forfeiture in the amount of \$30.00 is adequate to assure protection of the public.

C. Collection of Forfeitures

Initially, there were some questions regarding whether the Board has the authority to collect forfeitures in conjunction with the issuance of a Citation for Administrative Forfeiture. After further review of the Board's authority in Wis. Stats., § 454.15 and Wis. Adm. Code, ch. BC 10, it is clear that the Citation procedures are designed to assess, not collect, costs.

In this case, if Ms. Woods had paid the forfeitures assessed in the Citations issued against her, she would have made the payments voluntarily. Since she did not pay the forfeitures, if the Board assesses forfeitures and Ms. Woods does not voluntarily pay the forfeitures, the Board will still need to collect the forfeitures through a court action.

D. Assessment of Costs

In this case, the Citations for Administrative Forfeiture issued against Ms. Woods contained a provision assessing forfeitures and costs in the amount of \$190.00. There is no evidence in the record regarding what part of the \$190.00 constitutes forfeiture and what part constitutes costs.

In my opinion, the Board may assess costs in conjunction with a Citation for Administrative Forfeiture only in an instance in which the Board also limits, suspends, or revokes a licensee's credential or reprimands a licensee.

The procedures for assessment of costs are set forth in Wis. Stats., § 440.22 (2), which read as follows:

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

It is clear from reading Wis. Stats., § 440.22 (2), that the Board may impose costs only in instances in which it issues an order of suspension, limitation or revocation of a credential, or in which it reprimands a credential holder.

Based upon the record herein, the Administrative Law Judge recommends that the Barbering and Cosmetology Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 24th day of March, 2008.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge